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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 1012

LANGDON GATES,

Petitioner,

vs.

THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE CRIMINAL COURT OF COOK COUNTY, COOK COUNTY, ILLINOIS.

BRIEF FOR RESPONDENT IN OPPOSITION.

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THE DUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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OPINION BELOW.

Langdon Gates was tried without a jury; no written opinion was delivered.

The opinion of the Illinois Supreme Court is set forth in *People* v. *Gates*, 29 Ill. 2d 486; 195 N. E. 2d 161.

QUESTION PRESENTED.

Was the Petitioner prejudiced by evidence concerning co-defendants admitted without objection in the trial court, where on review, the Petitioner was held not to be a part of a conspiracy?

Was the Petitioner prejudiced by testimony of an informer as to conversations with two co-defendants concerning stolen goods, where the informer also testified as to dealings with the Petitioner on the same subject matter?

Did Petitioner waive any right to object to a joint trial by the failure to present a motion for a severence?

STATEMENT OF PROCEEDINGS BELOW.

The Petitioner and two co-defendants Victor Spilotro and Ronald Hansen were jointly charged in a six count indictment with unlawfully receiving stolen property and conspiracy to receive stolen property. All three defendants were convicted of the substantive offense and of three counts of conspiracy. The convictions of Hansen and Spilotro were affirmed by the Illinois Supreme Court on all counts. The conviction of Gates was affirmed on unlawfully receiving stolen property, but reversed on the conspiracy counts. Hansen and Spilotro were denied certiorari by this Court.

THE TRIAL COURT DID NOT COMMIT ERROR IN THE ADMISSION OF TESTIMONY PERTAINING TO MATTERS OTHER THAN THE OFFENSE CHARGED IN THE INDICTMENT.

Without mention of any particular testimony, the Petitioner asserts that a mass of evidence was received on the conspiracy theory, which was improperly admitted against him, in view of the finding of the Illinois Supreme Court that he was not a party to the conspiracy.

The same contention was raised in the Illinois Supreme Court and treated in the *Gates* opinion:

> "Defendant further insists that error was committed in receiving and considering as evidence against him testimony relating to various events and transactions with which he had no connection. The contention is without merit. In all but one instance there was no objection to the introduction of the evidence. In that one instance testimony was given by Narbut which related to his arrest on August 17, 1961, and a conversation between him and Hansen at which defendant Gates was not mentioned. Defendant has not shown how this prejudiced him, and under the present circumstances no reversible error could have resulted from admitting this evidence. *People* v. *Green*, 27 Ill. 2d 39."

Aside from the waiver clearly present, evidence of prior dealings in stolen goods was admissible to show the defendant's guilty knowledge on the charge of unlawfully receiving stolen property.

The entire alleged error in the admission of evidence arises from the testimony of the informer, Ronald Narbut. Gates did not meet Hansen and Spilotro until all three had been arrested. Narbut testified as to prior conversations

with Gates on stolen accordions, diamonds and television sets. After the conversations with Gates, he attempted to sell these items to Hansen and Spilotro. Narbut's testimony as to his transactions with Hansen and Spilotro was admissible, since Narbut, Hansen and Spilotro were found to be conspirators by the trial court and the Illinois Supreme Court. This testimony could not have been prejudicial to Gates in a bench trial, as Narbut also testified concerning direct contact with Gates on these subjects.

Significantly, Gates' privately chosen counsel did not move to have his trial severed from Hansen and Spilotro. Under these circumstances, he cannot complain that evidence concerning other defendants was admitted at his trial. *People* v. *Green*, 27 Ill. 2d 39, 42. In *Schaffer* v. *United States*, 362 U. S. 511, 516, this Court stated that there was no hard and fast rule that a joinder was error when a conspiracy count failed.

CONCLUSION.

For the foregoing reasons, it is respectfully suggested that this Petition for Certiorari be denied.

Respectfully submitted,

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